



Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

Respondent objects to a vocational rehabilitation assessment being ordered as respondent received no notice that claimant was requesting vocational rehabilitation under K.S.A. 44-534a(a)(1).

K.S.A. 44-534a, as amended, states in part:

“(a)(1) At least seven days prior to filing an application for a preliminary hearing, the applicant shall give written notice to the adverse party of the intent to file such an application. Such notice of intent shall contain a specific statement of the benefit change being sought that is to be the subject of the requested preliminary hearing. If the parties do not agree to the change of benefits within the seven day period, the party seeking a change in benefits may file an application for preliminary hearing which shall be accompanied by a copy of the notice of intent and the applicant’s certification that the notice of intent was served on the adverse party or that party’s attorney and that the request for a benefit change has either been denied or was not answered within seven days after service. Copies of medical reports or other evidence which the party intends to produce as exhibits supporting the change of benefits shall be included with the application. . . .”

Claimant provided a letter to respondent dated May 22, 1996, requesting an accommodated position for the claimant or an application for hearing would be filed. His second letter dated June 3, 1996, requested temporary total disability compensation or an application for hearing would be filed. Neither letter discussed vocational rehabilitation. The Special Administrative Law Judge, in his Order, found that respondent knew almost two months prior to the preliminary hearing that claimant was asking for temporary total disability benefits or accommodated employment. He then stated:

“Under the law existing prior to July 1, 1993, the only way that temporary total benefits could be granted was during a vocational assessment. Surely Respondent’s counsel knew that Claimant in asking for temporary total was asking for a vocational assessment.”

The Special Administrative Law Judge went on to grant claimant’s request for a vocational assessment.

K.S.A. 44-534a, as amended, limits the right to appeal from preliminary hearings to specific jurisdictional issues dealing with whether the employee suffered an accidental injury, whether the injury arose out of and in the course of the employee’s employment, whether notice is given or claim timely made, or whether certain defenses apply. K.S.A. 44-551(b)(2)(A), as amended, allows review by the Appeals Board of the administrative law

judge's preliminary awards if "it is alleged that the administrative law judge exceeded the administrative law judge's jurisdiction in granting or denying the relief requested at the preliminary hearing."

The Appeals Board acknowledges none of the specific issues listed in K.S.A. 44-534a are at issue in this appeal. Thus, in order for the respondent to have the right to appeal to the Appeals Board, it must be found that the Special Administrative Law Judge exceeded his jurisdiction in granting the relief requested.

The Appeals Board, in reviewing the evidence, finds that the claimant's seven-day demand letter requesting an accommodated job followed by a later letter requesting temporary total disability compensation do not contain specific statements requesting benefits in the form of vocational rehabilitation or a vocational rehabilitation assessment. The Special Administrative Law Judge in granting the assessment absent claimant meeting the statutory requirements of K.S.A. 44-534a, as amended, has exceeded his jurisdiction. The Appeals Board finds this matter should be remanded to the Administrative Law Judge for an additional hearing regarding claimant's request for entitlement to vocational rehabilitation with directions that the appropriate statutory procedural requirements be followed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Special Administrative Law Judge Michael T. Harris dated August 12, 1996, should be, and is hereby, reversed and remanded to the Administrative Law Judge for proceedings consistent with this opinion.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of October 1996.

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BOARD MEMBER

c: Seth Valerius Topeka, KS  
Alisa A. Nickel, Dodge City, KS  
Kenneth S. Johnson, Administrative Law Judge  
Michael T. Harris, Special Administrative Law Judge  
Philip S. Harness, Director